



Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1999/13
14 July 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Fifty-first session
Item 5 of the provisional agenda

THE IMPLEMENTATION OF HUMAN RIGHTS WITH REGARD TO WOMEN

Report of the Secretary-General on the situation of women
and girls in Afghanistan, submitted in accordance with
Sub-Commission resolution 1998/17

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Introduction

1. In its resolution 1998/17, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to continue consideration of the question of the situation of women in Afghanistan at its fifty-first session under the same agenda item and requested the Secretary-General to provide the Sub-Commission with all relevant information on the question available within the United Nations system.
2. The data and information used in the present report have been provided by UNOCHA, UNHCR, the Division for the Advancement of Women, UNICEF and other agencies and NGOs in Afghanistan, Islamabad and Peshawar. In the preparation of the report, account has also been taken of recent reports of the Special Rapporteur on the situation of human rights in Afghanistan.
3. All international staff left Afghanistan in August 1998 until March 1999 when it was decided to return international staff gradually to the country, with certain restrictions. The monitoring and assessment of the situation of women and girls during that period was severely affected by the international staff's absence.

1. HUMAN RIGHTS OF WOMEN AND GIRLS IN AFGHANISTAN

4. Afghanistan is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War. Nevertheless, women are unable to enjoy the most basic rights, particularly civil and political rights, the right to education, employment, health, movement and personal security.
5. During 30 years of conflict, women have been killed indiscriminately in fighting between opposing sides and thousands of women and children have been displaced or forced to flee the country as a result of systematic human rights abuses. In addition, women have been abducted and raped by members of the various warring factions, often being treated as the spoils of war.
6. The Commission on Human Rights, in its resolution 1999/9 on the situation of human rights in Afghanistan, adopted on 23 April 1999, expressed deep concern about the severe situation of women and girls in Afghanistan, in particular in all areas under the control of the Taliban movement, as documented by continued and substantiated reports of grave violations of the human rights of women and girls, including all forms of discrimination against them, such as the denial of access to health care, to all levels and types of education, to employment outside the home and, in repeated instances, to humanitarian aid, as well as restrictions upon their freedom of movement. Further, the Commission strongly condemned the continuing grave violations of the human rights of women and girls, including all forms of discrimination against them, in all areas of Afghanistan, particularly in areas under the control of the Taliban.

7. In this context, the Commission decided to extend the mandate of the Special Rapporteur on the situation of human rights in Afghanistan for another year, and requested the Special Rapporteur to report on the situation of human rights in Afghanistan to the General Assembly at its fifty-fourth session and to the Commission on Human Rights at its fifty-sixth session.

8. The Commission on Human Rights first appointed a special rapporteur to examine the human rights situation in Afghanistan in 1984 ^{1/} and has regularly renewed the mandate since that date.

9. The Special Rapporteur reported ^{2/} that, following the capture of Kabul in 1996, the Taliban imposed restrictions on women in Kabul, Herat, Kandahar and other areas they controlled. Taliban policies have been communicated through edicts approved by its ruling shura (traditional consultative body) and enforced to a large extent by the Ministry for the Prevention of Vice and the Promotion of Virtue. Tens of thousands of women remain restricted to their homes under Taliban edicts banning them from seeking employment, education or leaving home unaccompanied by a close male relative. Other measures restricting women, and which may have repercussions for their health, include the closure of women's hammams (public baths). Women are also barred from the streets for certain periods during the fasting month of Ramadan.

10. Many of the edicts have been interpreted differently by different representatives of the Taliban authorities, and practised with varying degrees of rigour in different parts of the country. It is reported that in certain areas restrictions have been enforced through the use of cruel, inhuman and degrading punishment and ill treatment, including the beating of women by Taliban guards in public places.

11. The impact of the restrictions has been felt most profoundly in urban areas where women had greater access to education, employment opportunities and health facilities and had enjoyed freedoms which were unthinkable for rural women. Women used to work in all sectors of employment, including in scientific, academic and technical fields, as well as in government positions, and were therefore greatly affected by the Taliban edicts curtailing their freedom. However, it is estimated that more than 75 per cent of the population live in rural areas where confrontation with Taliban values have been less serious. ^{3/}

12. The Special Adviser to the Secretary-General on Gender Issues and Advancement of Women, in her 1997 mission report on Afghanistan, ^{4/} emphasized that the discrimination, restrictions on freedom of movement, segregated or prohibited workplaces and exclusion from education which inhibit women and girls' full participation in the life of their country are much more harmful than a restrictive dress code (imposition of the burqa traditional dress code on women who were no longer wearing it, mainly in the urban areas). The report further states that the situation of women and girls in Afghanistan is defined by two primary factors, deprivation caused by the continuing war and policies directed towards the removal of women from public life, and two secondary factors, traditional customs that often reinforce their secondary status and assistance programming that fails to mainstream women.

13. It is argued that the Taliban have established a degree of security in the areas under their control. On the other hand, they have imposed severe repressive measures, especially with regard to women. Violations of the human rights of women are not exclusive to the areas controlled by the Taliban. Although little information is available about areas controlled by the Northern Alliance (United Front), it would appear that women are at risk of being raped by armed groups.

14. In his latest report ^{5/} to the Commission on Human Rights, the Special Rapporteur reported that, during his visit to Kabul, he had observed some relaxation of the restrictions imposed on the rights of women, as a few women doctors and nurses were seen at work in a hospital attending to female patients. A more flexible attitude had been expressed by Taliban representatives with regard to the access of girls to education and a recent edict had granted exemption to needy widows from the restriction against the employment of women in urban areas. It had been urged that it was imperative to maintain and enhance humanitarian assistance not only to meet basic human needs and thus to uphold the right to life of millions of suffering Afghans, but also to provide incentives for ending or significantly relaxing the existing restrictions which were violative of human rights. Moreover, the Special Rapporteur stated that some of the main issues of concern in the country were related to the denial of the right to education of girls and gender discrimination in general. The improvement of the overall human rights situation would require the emergence of a framework for building peace through an inclusive participatory process involving continuing consultations with all segments of the Afghan people, aimed at establishing a broad-based, multi-ethnic and fully representative government.

II. PRINCIPAL AREAS OF CONCERN

15. The Commission on Human Rights, in its resolution 1999/9, expressed its deep concern about the severe situation of women and girls in Afghanistan, in particular in regard to the most grave violations of their human rights and the denial of access to health care, to education and to employment.

A. Health

16. The Special Rapporteur on the situation of human rights in Afghanistan reported ^{6/} that directives were issued on 6 September 1997 by the Taliban Ministry of Public Health concerning the removal of female staff from Kabul's medical facilities and the closure of services to women in all of the city's hospitals, with the exception of a few that would be allowed to treat emergency cases. Medical services for women were to be concentrated in a single hospital that was barely operational. The female population were reportedly suffering from post traumatic stress disorders, and the suicide rate among women was said to be on the rise. ^{7/} As a result of continued international pressure, official Taliban restrictions on access to health care, imposed in 1997, have since been lifted.

17. Poverty, distant or poor services, low literacy rates, lack of appreciation of health needs and lack of female health care personnel are all factors which have further restricted access to health care for Afghan women.

18. According to information received, a Health Commission was constituted in Kabul in 1998 under the Ministry of Public Health, with membership drawn from NGOs, United Nations agencies and local health authorities, to monitor the progress of the decisions and agreement reached between the international community and local health authorities over the issue of women's access to health facilities in Kabul. The hospitals in the city are reportedly now treating and admitting women and men on an equal basis, except for one hospital, where funds are awaited to construct a separate entrance and access for women patients.

19. The World Health Organization (WHO) is conducting training courses for Afghan female health personnel, as well as in-service training for existing female health workers. Women's health needs are considered a priority and plans are being made to alleviate Afghan women's suffering by reducing the mortality and morbidity rates among them, especially women of child-bearing age (14-45), who are the most vulnerable group.

20. In partnership with a number of organizations, the United Nations Children's Fund (UNICEF) is making an effort to promote a community-based maternal health programme in Afghanistan. The programme includes: provision of quality health care and nutrition to mothers and infants; provision of essential drugs and supplies; training of village health workers and community midwives; referral services and distribution of simple "clean delivery kits". 8/

21. According to UNICEF, 2/ vaccination coverage rates of children are one of the few indicators in Afghanistan in which there is no significant gender gap. This is a consequence of the positive values of Afghan society with regard to the well-being of children, as well as the concerted efforts of all partners to raise awareness on the need for all children to be vaccinated. The UNICEF report states that one of the benefits of focusing on immunization as an entry point to the realization of the rights of Afghan children has been the establishment and strengthening of a regional and provincial expanded programme on immunization management teams, and mobilization of male and female health worker vaccinators.

22. The results of returnee monitoring by the Office of the United Nations High Commissioner for Refugees (UNHCR) indicate that only 54 per cent of returnee families have access to health services. UNHCR continues to cooperate closely with WHO and international non-governmental organizations in the health sector to provide basic health services in areas with large numbers of returnees. 10/

B. Education

23. In his 1997 report to the General Assembly, 11/ the Special Rapporteur on the situation of human rights in Afghanistan reported that female education was banned in all parts of the country under Taliban control and that the general trend in education was described as a shift from regular schools to home schools since home schools are more or less accepted. Even in cases when it is allowed, negotiations concerning education reportedly have to be carried out on a case-by-case basis. It was reported, however, that girls were allowed to attend primary school in certain parts of the country.

24. The Special Rapporteur noted that the Taliban Acting Minister of Higher and Vocational Education had stated that separate education for women would come in the future, if the authorities had sufficient resources. The Acting Minister had indicated that women's attendance was conditional on segregation and that they would only be allowed to study medicine, education and moral and other social subjects.

25. Although school attendance of girls in the central and southern parts of Afghanistan has always been low, the Special Rapporteur reported that it was now non-existent. This is also the case in the western part of the country and in Kabul, where girls are said to have constituted 40 per cent of all schoolchildren (30 per cent in Herat). The Special Rapporteur was informed in 1997 that a number of girls were allowed to attend school in the camps for internally displaced persons and returnees in Herat. Female education continued in the northern part of Afghanistan, then under the control of the Northern Alliance, where girls accounted for 25 per cent of pupils.

26. The Special Rapporteur was informed by scholars that it was a religious obligation in Islam to acquire education and that deprivation of education constituted a disobedience of Islamic principles. The view was expressed that the motivation on the part of the Taliban for banning female education was neither legal, financial nor based on security, but was probably politically motivated.

27. According to UNICEF, net primary school attendance between 1992 and 1997 was 36 per cent among boys and only 11 per cent among girls. The adult literacy rate is 47 per cent for men and 15 per cent for women. Although there has always been a gender gap in education in Afghanistan, in the opinion of UNICEF Executive Director Carol Bellamy, it has been exacerbated and institutionalized as a result of edicts issued by the Taliban authorities banning girls from attending formal schools and female teachers from working, in contravention of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

28. The United Nations has been in dialogue with the Taliban authorities on the issue of gender equity in education. This advocacy and negotiation process culminated in the signing in May 1998 of a memorandum of understanding between the United Nations and the Taliban, in which it is stated that "men and women shall have the right to education".

29. In his 1998 report, 12/ the Special Rapporteur on Afghanistan noted differences in discriminatory practices in the different regions. In regard to education, for example, in one district in Kandahar, all families were instructed to send both their male and female children to school up to the age of 12, whereas the Special Rapporteur was informed that there was absolutely no education, not even in Koranic schools, for girls in Jalalabad, Nangarhar province.

30. The Special Rapporteur reported that the head of the judiciary in Nangarhar province indicated that it was important to impose restrictions on education for girls in the city, even though there were numerous schools in the villages. The authorities were reportedly compelled to implement the restrictions in the city because of the legacy of the previous Government's leniency.

11. According to UNHCR reports, education is prohibited to girls in most areas of the country, and surveys among returnees show that 76 per cent of primary school-age children of returning families do not attend school. However, the Taliban authorities have allowed support of home based schools for girls in Kandahar, parallel to improved formal education for boys. 11/

12. It is estimated 12/ that there were approximately 4.4 million children of primary school age in 1998 and of these children roughly 250,000 attended externally supported schools. In addition, around 750,000 were in government schools. The rest, in round numbers 1.4 million children - 2 million girls and 1.4 million boys - never attended school. There are very few secondary schools, while education at university level is extremely rare.

13. Although it is reported that in many rural areas the traditional reluctance with regard to girls' education has changed, it still meets with considerable resistance today, not only traditional but also political, in the form of policies and practices of the Taliban movement. In some areas, mainly in the cities, girls are not allowed to attend school on any condition, while in others, mainly the rural areas, they do attend school. 13/

14. The total destruction of the educational infrastructure has had an effect on girls' schooling in most parts of the country, including areas where the Taliban's ideology is less restrictive. The "brain drain" from Afghanistan, through immigration to neighbouring countries, has greatly depleted the number of available teachers.

C. Employment

15. Following the capture of Kabul in 1996, the Taliban imposed numerous restrictions on women, including an edict banning them from seeking employment.

16. In keeping with this policy, when the Taliban entered Mazar-i-Sharif on 24 May 1997, they immediately announced that women were banned from working and receiving education. Women were reportedly also not allowed to leave the city. After the departure of the Taliban from the city in June 1997, foreign aid agencies in Mazar-i-Sharif were instructed by the Department of Foreign Affairs of the National Islamic Movement of Afghanistan to stop employing female Afghan staff. The instructions were reported to have been issued by the Jehadi (Holy War) Shura (Council) in the northern part of Afghanistan (then not under Taliban control) which is headed by the Governor of Balkh province. This entailed a reduction in the activities of international aid agencies. Subsequently, it was reported that Afghan women would be allowed to work only in agencies headed by women or to be employed as nurses and doctors in hospitals. It is believed that only 20 per cent of the female workforce in the health sector is currently employed.

17. On 24 May 1997, members of the Taliban religious police in Kabul stopped a minibus carrying Afghan women employees of the non-governmental organization CARE International. The women were taken out of the vehicle and beaten, in spite of the fact that their organization had obtained written permission from the authorities allowing them to work. On 1 June 1997, the then Deputy Director of the Department for the Preservation of Virtue and Prevention of

Vice of the Taliban authorities, Mullah Qasimuddin, apologized to CARE International and gave written authorization for three of its projects employing women, including an emergency feeding programme for households in Kabul headed by widows.

48. Subsequently, on 18 July 1999, the President of the Department for the Preservation of Virtue and the Prevention of Vice addressed a letter to the Kabul office of the Agency Coordinating Body for Afghan Relief containing instructions concerning the behaviour of staff of non-governmental organizations and of hospitals. The instructions, to be observed by all international agencies and Afghan non-governmental organizations, stipulated, inter alia, that the Shariah (Islamic law) did not allow the employment of women in governmental departments or international agencies and that women should not leave their residences. Women would be allowed to work only in the health sector; agencies were not to employ Afghan women in any other sector. Assistance to widows and needy women was to be provided only through their male blood relatives, without the employment of female project monitors. Afghan women were not allowed to travel in a vehicle with expatriates.

49. Afghan women had been working with a number of aid agencies, including the International Committee of the Red Cross, CARE International and the World Food Programme. On 24 April 1999, the Taliban signed their first protocol officially allowing Afghan women to work with a foreign aid organization. The protocol between the Swiss based organization Terre des Hommes and the Taliban will allow up to 10 local women to work in a child aid programme around Afghanistan. It followed about 18 months of negotiations. The protocol was signed by Health Minister Mullah Mohammad Abbas Akhund and will enable Terre des Hommes to begin its programme aimed at reducing child mortality rates and improving infant health care. Other foreign aid groups have been attempting to reach a similar formal agreement with the Taliban, so far without success.

50. To conclude, a report entitled "The right to livelihoods" ^{16/} stated that there can be little doubt that restrictions on where and how women are able to work have accelerated the cycle of impoverishment among many urban families, especially those without able-bodied male earners. The destitution that is evident among a growing proportion of urban families, with a consequent increase in public begging, is the culmination of years of material and human loss, coupled with growing levels of morbidity, which has affected the ability of women and men to provide for themselves and their children.

III. UNITED NATIONS PROGRAMMES AND STRATEGIES

51. At the fifth meeting of the Afghanistan Support Group, held on 21 and 22 June 1998 in Stockholm, the participants expressed the view that the needs of the Afghan people justified a sustained commitment to humanitarian assistance, including assistance in addressing the human rights deficit of children and women, in particular female-headed households. The meeting addressed the approach to rights-based programming which aims to advance human rights through assistance activities. The participants welcomed the many examples of constructive local level cooperation and commitment and emphasized the opportunities for constructive engagement at the community level. The

positive long term effects of supporting primary education, access to vaccination, the right to a levelised and gender equity were noted as priority areas within rights based programming.

42. The United Nations Coordinator's Office will follow a gender action plan during 1999 which will include consulting in a dialogue with civil society, Government departments, and religious and political leaders with the aim of identifying opportunities for gender-related interventions inside Afghanistan. This engagement should lead to the identification and utilisation of a number of entry points for enhancing women's mobility and their access to social services and alleviating the poverty of women headed families through income generating employment.

43. An inter-agency gender mission, conducted in November 1997, 11/ undertook an examination of the position of women in Afghanistan, the contexts within which external assistance is conceived and delivered, the ways that the international community can address gender concerns in the delivery of aid, and indicators that can be used to ensure the appropriate monitoring of assistance activities.

44. Subsequently, a new Gender Coordinating Unit (GCU) has been set up this year within the PEACE Initiative Programme (consisting of which will be extended to all United Nations agencies in the near future) of the United Nations Coordinator's Office working out of Pakistan. It aims to formulate gender policy jointly with other agencies and to implement it together with the recommendations of the 1997 inter-agency gender mission. GCU will formulate guidelines for gender mainstreaming, setting realistic objectives for gender activities, working with partners on pilot projects and establishing minimum standards for best practice. Besides providing ongoing training for unit members, GCU has obtained funding for training United Nations staff on gender sensitisation and mainstreaming and on human rights and gender equity issues in delivering development assistance in the Afghanistan context.

45. The World Bank has signed an agreement with UNDP Afghanistan for an Afghanistan watching brief. The brief has three subcomponents, the third of which is a set of pilot programmes to support Afghan women's NGOs based in Pakistan.

46. Through its presence and monitoring, UNHCR ensures that protection related issues affecting returnees are addressed if and as they arise. Female returnees may be subject to restrictive traditions, with the consequent effects on their health, security and personal freedom.

47. The United Nations Executive Committee on Humanitarian Affairs (ECHA) has promulgated guidelines (labelled the principle-centred approach to gender issues) that include recommendations on capacity-building. The assistance community has had to face the possibility of withdrawing from Afghanistan, not only because security conditions are difficult, but also because it has found it impossible to have an impact without sustaining debilitating cost to its principles and practices. The principle-centred approach to gender emerged

from a two-year debate with the United Nations and the larger assistance community about human rights in Afghanistan and the most appropriate ways to respond to restrictions on the activities of women and girls.

IV. CONCLUSIONS AND RECOMMENDATIONS

48. The situation of women and girls in Afghanistan is extremely serious, owing to the unqualified policy of gender discrimination in the country, and requires close monitoring by the Special Representative on the violation of human rights in Afghanistan, the Special Representative on violence against women, other various-conceptual United Nations mechanisms and the international community.

49. Many of the Taliban edicts have been misrepresented and interpreted differently by different representatives of the Taliban authorities, and practiced with varying degrees of rigour in different parts of the country. While there have been encouraging moves to relax the restrictions imposed on the rights of women in certain areas, including an edict granting exemption to needy widows from the restrictions on the employment of women in aridh arzon and the first official protocol allowing Afghan women to work with a foreign aid organization, this nevertheless only addresses limited aspects of the overall problem.

50. The United Nations work to promote the human rights of women and girls through constructive local level cooperation and commitment has been reasonably successful. Nevertheless, opportunities for constructive engagement at the community level through community level projects should be pursued.

51. All armed groups in Afghanistan must respect fundamental human rights, particularly those of women, in accordance with international human rights standards and humanitarian law.

52. All Afghan parties and in particular the Taliban, should bring to an end without delay all violations of the human rights of women and girls and take urgent measures to ensure: the repeal of all legislative and other measures which discriminate against women; the effective participation of women in civil, cultural, economic, political and social life throughout the country; respect for the right of women to work, and reintegration of women in their employment; the right of women and girls to education without discrimination; the reopening of schools and the admission of women and girls to all levels of education; to ensure respect for women's right to security of person and that those responsible for physical attacks on women are brought to justice; respect for women's freedom of movement and effective and equal access to facilities necessary to protect their right to the highest attainable standard of physical and mental health.

53. All Afghan parties should fulfil their obligations and commitments regarding the safety of all personnel of diplomatic missions, the United Nations and other international organizations, and of their premises in Afghanistan, and to cooperate fully and without discrimination on the grounds of gender, nationality or religion, with the United Nations and

associated bodies, as well as with other humanitarian organizations, agencies and non-governmental organizations, in order to facilitate full resumption of their cooperation.

54. Assistance aid has been, for the most part, short-term and humanitarian in nature. Where possible, assistance aid should allow for medium-term programming. Medium-term involvement is necessary for gender issues to be addressed as they require long-term processes of structural change at the social and cultural levels.

55. The Special Rapporteur on violence against women should be invited to undertake a mission to Afghanistan.

Notes

1/ Economic and Social Council resolution 1984/17 of 24 May 1984, Mr. Felix Ermacora served as Special Rapporteur for Afghanistan from 1984 until his death in 1995. Mr. Choong Hyun Paik was appointed in April 1995 and his mandate was renewed in 1996 and 1997, he resigned towards the end of 1998. Mr. Kamal Hossain, the present Special Rapporteur, was appointed by the Commission on Human Rights in December 1998.

2/ See E/CN.4/1997/53.

3/ Henry Hatch Dupree, "Social challenges past and present", paper prepared for the Swedish Committee of Afghanistan Seminar entitled "Afghanistan, aid and the Taliban", Stockholm, 24 February 1999.

4/ Inter-agency gender mission to Afghanistan, 12-14 November 1997, led by Ms. Angela E.V. King, the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women.

5/ See E/CN.4/1998/48, para. 31.

6/ See E/CN.4/1998/71.

7/ See "The Taliban's war on women: a health and human rights crisis", Physicians for Human Rights, August 1998.

8/ Each kit will contain a piece of soap, a razor blade, tape for tying the infant's umbilical cord, a plastic sheet and a pictorial instruction leaflet.

9/ UNICEF, "Right to health: vaccination the right of all Afghan children", paper prepared for the Afghanistan Support Group meeting, Stockholm, 21-22 June 1999.

10/ UNHCR, 1999 global appeal for the repatriation and reintegration of Afghan refugees.

11/ See A/52/493, annex.

12/ See E/CN.4/1998/71.

13/ See A/52/493, annex.

14/ Ellen Kaimthout, UNICEF/Afghanistan, "Education in Afghanistan: the current situation".

15/ Anders Fange, Swedish Committee for Afghanistan, "The state of education in Afghanistan", Peshawar, 7 June 1999, paper prepared for the Afghanistan Support Group meeting, Stockholm, 21-22 June 1999.

16/ "The right to livelihoods", Kabul, 10 June 1999, paper prepared for the Afghanistan Support Group meeting, Stockholm, 21-22 June 1999.

17/ Inter-agency gender mission to Afghanistan, 12-24 November 1997, led by Ms. Angela E.V. King, Special Adviser to the Secretary-General on Gender.



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Distr.
GENERAL

E/CN.4/Sub.2/1999/14
9 July 1999

ENGLISH
Original: FRENCH

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Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Fifty-first session
Item 5 (a) of the provisional agenda

THE IMPLEMENTATION OF THE HUMAN RIGHTS OF WOMEN

TRADITIONAL PRACTICES AFFECTING THE HEALTH OF WOMEN AND THE GIRL CHILD

Third report on the situation regarding the elimination of
traditional practices affecting the health of women and
the girl child, produced by Mrs. Halima Embarek Warzazi
pursuant to Sub-Commission resolution 1998/16

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Annex Ouagadougou Declaration

Introduction

1. In resolution 1998/16, the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended that the mandate of the Special Rapporteur on traditional practices affecting the health of women and the girl child should be extended to ensure the completion of her task, as called for in resolution 1996/19, and at the same time to enable her to follow up recent developments at all levels, including the General Assembly. In its resolution 1999/80 of 28 April 1999, the Commission on Human Rights approved the Sub-Commission's proposal. This third report is thus submitted pursuant to the resolutions referred to above.

2. It should be recalled that in each of her previous reports (1996, 1998), the Special Rapporteur deplored the small number of replies received from Governments, particularly those concerned by traditional practices affecting the health of women and the girl child, to the Secretary-General's note concerning the Plan of Action. In 1996 she noted that only 25 countries had replied; in 1997 Governments were even less forthcoming with replies from only seven countries. In 1998, the Special Rapporteur received just four replies, confirming the statement in the conclusion to her report to the Sub-Commission at its forty-ninth session (E/CN.4/Sub.2/1997/10 and Add.1) that "the silence of many States concerned justifies unflinching mobilization both nationally and internationally".

3. In accordance with the Sub-Commission's mandate, the Special Rapporteur devoted her previous reports to replies from States concerning the implementation of the Plan of Action to eliminate traditional practices affecting the health of women and the girl child. Despite the disappointment voiced in the reports, it should be noted that mobilization within the societies affected by the phenomenon of harmful traditional practices is still a force for positive, albeit slow, change.

4. Pessimism and discouragement at the size of the task of combating and eradicating such practices are no excuse for abandoning the struggle. The campaign now embarked upon must be pursued with the same will to succeed, with the perseverance which alone can topple barriers, and with unbounded faith in the dignity of all human beings, in particular the women and girls who are most sorely deprived of it.

5. The Special Rapporteur has chosen to devote this third report to a brief survey of the subject and a non-exhaustive presentation of the action taken, nationally and internationally, to combat traditional practices affecting the health of women and the girl child, before summing up the prevailing situation at the dawn of the third millennium.

I. HISTORICAL BACKGROUND

6. Female circumcision seems to be one of those age-old customs and traditions, whose murky historical origins and background have not been properly clarified. Many research projects, studies and investigations have been carried out in past decades. Researchers and experts have sifted through

the past, criss-crossed continents, deciphered ancient writings and studied histories and civilizations in an effort to find the origins and reasons for this practice which has stood the test of time.

7. Great historians such as Herodotus tell us that in the fifth century BC the Phoenicians, the Hittites and the Ethiopians practised circumcision. Other investigators tell us that the rite of circumcision was practised by pagan peoples in the tropical zones of Africa and in the Philippines, by the Incas in Mexico, by certain tribes in the Upper Amazon, and in Australia by the Arunta women. Last century some European doctors even resorted to circumcision to treat mental disturbances in women. In other words, the practice has been followed by a number of peoples and societies across the ages and the continents.

8. When one studies traditional practices, in particular female genital mutilation, it must first be noted that they are rooted in a whole set of beliefs, values, cultural and social behaviour patterns governing the lives of the societies concerned. Clearly, therefore, the survival of these traditions is justified, at least in the eyes of the societies concerned, which cannot have realized that some of their traditions are harmful or retrograde.

9. Such practices could have remained the exclusive, untouchable heritage of traditional societies if those societies had remained isolated from a world which, since the last century in particular, has been plunged into a new era marked by revolutions in technology, politics, society, economics and culture. The effect of these revolutions has been to sweep away the old certainties and transform old attitudes as radical change, accompanied by technical achievements and advances, has shortened distances, brought continents closer together and demolished all frontiers. Against the irresistible advance of this wave, no country - far less its usages, customs and traditions - could remain hidden, isolated or ignored.

10. Female circumcision, which is still the practice today, chiefly in Africa, used to be a taboo subject that few, even among the continent's officials and elites, dared to mention. Internationally, no study or positive recommendation could be made on any culturally related practice that carried a high emotional charge.

11. In 1952, the Commission on the Status of Women took up the question for the first time apropos the status of women in Trust and Non-Self-Governing Territories: unproductively, and not without reason. In the colonial era all foreign interference was rejected by the peoples concerned as deliberate aggression against their traditional culture and values. The revolution in Kenya against the English colonialists was justified, said Jomo Kenyatta, by their efforts to force the people to abandon female excision.

12. Even the World Health Organization, which the Economic and Social Council asked in 1958 to take up the question, avoided acting on the request, arguing that the ritual operations in question were based on social and cultural backgrounds, the study of which was outside the competence of WHO.

13. In the early days of independence some African women tried to point out the dangers of excision, but the time was not ripe for such a controversial

question and there was a violent public reaction. Since 1970, however, a number of women's associations and non-governmental organizations, International Federation Terre des Hommes among them, took up the problem seriously. In 1981, while the report of the Working Group on Slavery was under consideration, the question of female circumcision was raised by one non-governmental organization.

14. At the time, the Special Rapporteur was firmly against the Sub-Commission's taking up the matter: she felt that the discussion had got off to a very bad start, with hostile references to a certain religion and community to the exclusion of any other objective information or factors.

15. In 1982 the subject was raised again in the Sub-Commission, this time properly and objectively. The additional information gathered by the NGO concerned had shown the practice to be current in Islamic and Christian societies as well as in Ethiopian Jewish and African animist ones. As a result, the Sub-Commission adopted resolution 1982/15 of 7 September 1982 requesting two of the experts serving on it to carry out and present a study on all aspects of the problem and how it might best be remedied.

16. In 1983 the Sub-Commission, by resolution 1983/1, addressed a recommendation through the Commission on Human Rights to the Economic and Social Council, that it authorize two experts from the Sub-Commission to conduct such a study. But things in the Commission on Human Rights were less straightforward. A number of representatives of African countries where the practice was current were unenthusiastic about the Sub-Commission's proposal. The representative of Senegal came to the rescue by changing the title of the proposal and calling for a vote on a resolution requesting a study of traditional practices affecting the health of women and children.

17. The Sub-Commission therefore decided to set up a group whose mandate was to study all aspects of the problem, since it would comprise two experts from the Sub-Commission plus representatives from the United Nations Educational, Scientific and Cultural Organization, World Health Organization and the United Nations Children's Fund. The question of female excision having been watered down in the title of the study, the Commission passed a resolution setting up the group; the group held its first session at Geneva in March 1985. Although no longer a member of the Sub-Commission, Ms. Halima Warzazi was, exceptionally, designated to represent the Sub-Commission with the Indian expert, who proposed that she should chair the Working Group. Many NGOs contributed enthusiastically to the Group's work. Only at its third and last session, however, did three countries join the Group: China, Ethiopia and Senegal.

18. At its first session, the Working Group conducted a broad exchange of views on traditional practices affecting the health of women and children. When the time came to select among the harmful practices for the Group to concentrate on, the representatives of WHO and UNICEF raised objections regarding the priority to be accorded to female circumcision. They referred to the authors of the resolution in the Commission on Human Rights, who, they believed, had not been thinking exclusively of excision when they drafted it.

19. Their arguments were understandable, but since the NGOs and the Sub-Commission had taken such trouble to put the question on the international agenda, means had to be found of getting around the problem. It was therefore suggested that the Group should draw up a list of the most harmful traditional practices for women and children, and arrange them in order of priority according to certain criteria:

- (a) The extent of the phenomenon and the associated mortality and morbidity;
- (b) The possibility of modifying the practice;
- (c) The degree of awareness of the practice among the international community and, furthermore, the documentation available.

20. The list presented to the Group by the representative of WHO, who was assigned to produce it, comprised female excision, other forms of mutilation (facial scarring), the force-feeding of women, early marriage, various nutritional taboos and traditional practices associated with childbirth. The problem of dowries in certain parts of the world, crimes of honour and the consequences of son preference were also mentioned.

21. On the basis of the criteria established and the direct effects of the various practices on women's health and development, all members of the Group were persuaded to take up excision first. Thus the NGOs, the Sub-Commission and some of the experts on the Working Group accomplished their objective, since the Group considered female excision at length on the basis of reliable and worthwhile information, considering all the points it had laid down in order to cover all aspects of the problem.

22. Given the reactions in the Commission on Human Rights, the Chairman/Rapporteur insisted that the Group must be cautious in drafting its report to the Commission: the ill effects of excision on the health of children and women must be clearly set out while not going into certain issues which, though valid in the West, were regarded as antagonistic to the moral values of traditional societies. Moreover, the Group must not pass any kind of judgement that might give offence. Throughout, the Group had shared the NGO opinion that excision was a violation of human rights by the standards laid down in international instruments, but saying so outright, verbally or in writing, would not advance the cause.

23. Thus the report was careful to avoid such an error. It was wiser to let readers, in particular those most concerned, realize the seriousness of the problem by themselves. Thus, in the conclusions - more specifically in the part dealing with consequences - the report reads:

"It is interesting to note that some traditional practices were aimed, in traditional societies, at the closer incorporation of the individual within his social environment in order to enable him to benefit from all the rights of the individual which these societies recognized.

"Today, because of the evolution in traditional societies due to various factors, these traditional practices are at variance with new standards defined by various international agreements relating to human rights."

24. The report indicated that in the light of those principles, all countries that had ratified the international instruments were confronted with the incompatibility that existed between the obligations they had assumed as States parties to the various agreements and the maintenance of certain traditional practices, especially since the practices had proved injurious to the physical and mental health of women and children.

25. The Working Group having completed its study within the deadline set, its report was introduced in the Commission on Human Rights at its forty-second session, in 1986. The reaction was not long in coming. In March 1988 the Commission asked the Sub-Commission to consider measures to be taken at the national and international levels to eliminate such practices and to report to it.

26. And so it was that the Sub-Commission was called upon to appoint a special rapporteur and to study the question closely through the various reports submitted to it beginning in 1989. At the Sub-Commission's suggestion, the Commission gave its approval in 1990 for two seminars on the question of harmful traditional practices affecting women and children.

27. The aim of the seminar held in 1991 in Burkina Faso, bringing together some 15 experts from around the African continent, was to assess the human rights implications of certain practices such as female circumcision, son preference and traditional birth practices, and to gather information from participants on measures taken at the governmental and non-governmental levels. The experience was extremely rewarding.

28. The tone was set by the President of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children in Africa (IAC), who presented a keynote paper. Participants embarked on a discussion of the difficulties and obstacles she mentioned, and the questions and answers given revealed the extent of the interest taken in the topics under consideration, female circumcision in particular.

29. Factors mentioned were the rigidity of traditions, the socio-cultural milieu that perpetuated them, underlying economic factors, the religious factor which gave men preference over women, the inheritance system, disparities between the sexes in matters such as education, the role played by women in perpetuating traditions unfavourable or harmful to them, and the ignorance and poverty from which women in particular suffered.

30. Each representative described the situation in her country and governmental and non-governmental action taken to raise awareness among all members of society and eliminate harmful practices. They pointed out, however, that the question had not received the attention it deserved in most of the States concerned. The persistence of such practices was due to a lack of political will among Governments and the failure to inform and educate the

public. On the basis of that observation the seminar adopted a series of recommendations on action to be taken nationally and internationally.

31. Participants regretted the absence of the Organization of African Unity (OAU) and requested it to take up the question. The seminar would trace the broad lines of action to be followed within the Sub-Commission. It would also show the way for participants at the second seminar, held three years later in Sri Lanka.

32. The second seminar discussed the same problems as the Burkina Faso meeting, including in particular harmful practices affecting women in Asia such as marriage and dowry and their socio-economic consequences on young women, the status of divorced women, and violence, including mutilation and immolation.

33. Under the first agenda item, much was said about the consequences of son preference, which is a virtually worldwide phenomenon, female infanticide, selective abortion, the role of women in the persistence of favouritism towards boys, and the socio-economic and religious reasons underlying that preference.

34. One of the consequences of the practice could be seen in simple statistics drawn up by population experts, indicating that despite women's greater biological sturdiness the proportion of women, who should logically outnumber men, had in Asia fallen alarmingly below that of men. It was remarked in that connection that Asia was a land of contrasts, where several countries had female prime ministers but where girls were of value in their parents' eyes only if through their labour or activities they could provide their parents with economic security.

35. Harmful practices associated with pregnancy, childbirth and early marriages were discussed, but violence against women and means of putting an end to it received particular attention. It was accepted that violence was a universal phenomenon, but the forms it took were different. Domestic and social violence, rape, women's lack of control over their fertility, incest, prostitution, women who were battered, burnt or married against their will, and the silence that surrounded such massive and continual violations, were discussed at length.

36. In fact, the seminar concluded, for a substantial majority of women the cycle of violence began when a girl was born and ended in neglected old age. Female circumcision, it was said, existed in some countries but was not, unlike in Africa, a matter of mutilation but simply a small incision with no health effects. Nevertheless, women's organizations in the region had studied the problem and embarked on negotiations with religious officials, given that the practice was attributed to Islam in the countries concerned.

37. As in Burkina Faso, participants spoke of the need for Governments to demonstrate their commitment, of education for women, of women's access to political and economic power, of the mobilization of well-intentioned people, and, of means of protecting women and girls. Following the discussions and in the light of the two seminars, a draft programme of action was drawn up

covering female circumcision, son preference, marriage and related practices, and violence. The programme of action would be adopted by the Sub-Commission in August 1994.

II. NATIONAL, REGIONAL AND INTERNATIONAL INITIATIVES

A. National initiatives

38. This section will briefly outline initiatives taken nationally by certain countries where traditional practices affect the health of women and the girl child, for their efforts deserve to be singled out in particular and other countries to do likewise. It is interesting to note that these governmental initiatives often reflect changes in public opinion, both in communities particularly affected by the phenomenon and elsewhere.

39. The Special Rapporteur notes the new law passed by the Senegalese Parliament prohibiting female sexual mutilation. The legislation was inspired by the women of the Senegalese village of Malingu, who launched a movement to do away with female excision, a practice deeply rooted in Senegalese society, some years ago. The women's determination to overcome deeply entrenched beliefs persuaded husbands and village elders to end the practice. The movement spread to other villages, particularly after President Abdou Diouf threw his weight behind it. The legislation, which calls for heavy fines and prison terms, will, according to the Senegalese President, be applied with discernment. So far Burkina Faso, the Central African Republic, Djibouti, Ghana and Guinea have prohibited female sexual mutilation.

40. It should also be noted that public awareness campaigns mounted over the years in Togo by the Government and non-governmental organizations, among them IAC, the African Association of Education for Development (AAED) and the Togolese Association for Family Welfare (ADEF), led to the adoption on 19 October 1998 of a law prohibiting female genital mutilation. The law, passed unanimously by the National Assembly, makes both the performance of such practices and incitement to them punishable. The penalties range between 2 months' and 10 years' imprisonment and fines of 100,000 to 2 million CFA francs.

41. The Special Rapporteur wishes to draw attention to the decision by the Egyptian Council of State on 18 December 1997 that it was "beneficial" prohibited to practise excision even in cases where the girl and her parents give their consent. "Circumcision of girls is not a right of the individual under the Shariah... nothing in the Koran authorizes it", the Council stated, thus rejecting the opposite argument invoked by extremists. The importance of that decision should not be underestimated, given that it comes from a country that has always been at the centre of Islamic jurisprudence and studies. The Council of State's decision thus puts an end to the manipulation of Islam and deals a fatal blow to those who used to defend circumcision on religious grounds.

42. Other public initiatives, not always supported by the authorities, deserve mentioning. More and more women are rebelling against traditional practices when their own daughters must undergo them. The press carries more

and more laudable reports of mothers doggedly taking on their families and local communities thanks to campaigns on the radio alerting the public to the consequences of female excision, and thanks also to the instruction given by some women's organizations.

43. Last year the Special Rapporteur's attention was caught by a promising experiment in Kenya. An American non-governmental organization, The Program for Appropriate Technology (PATH), in collaboration with a Kenyan national women's group, launched an interesting experiment aimed at replacing the rite of female circumcision by "modern rites of passage". Recognizing the importance that local people attached to girls' initiation allowing them to take their place within the community, the NGO and the Kenyan women's group used all their talents and persuasion over three years to convince rural families in a small village to take part in the alternative ritual. The programme, which does away with any mutilation, encourages girls ready to assume their adult responsibilities to seclude themselves for a week during which they receive parts of the traditional education on their future roles as women plus more modern material on health, reproductive problems, effective means of communication, self-respect and esteem and how to deal with problems they may encounter in their lives as women. The community celebrates the end of this week of initiation with songs, dances and a feast. At the end of the initiation the girls join adult society without circumcision.

44. According to recent information from IAC, which went to the Dodoma region of Tanzania in September 1998 as part of a follow-up mission to programmes to combat female genital mutilation, a mutilation-free initiation ceremony has been held there for the first time. During a ceremony in the Wagogo community in the village of Mapinduzi (Dodoma region), an "elder" retraced the history of female genital mutilations within the community. He said that excision was a tradition inherited from their ancestors which prepared girls for becoming adults and mothers. A girl who had not undergone excision would not find a husband and would be regarded as pariah, with no rights. Information campaigns and constant community awareness campaigns against female genital mutilation by "village agents" among the groups concerned have brought about a change in attitudes towards such practices. The change had encouraged the village agent to suggest an initiation ceremony without mutilation to groups of 13 girls aged between 10 and 13. Instruction had begun two weeks before the ceremony proper, and the girls had learnt how to keep house, had been taught about hygiene and sexual education etc. For the main ceremony the girls had to sit on the ground; a bowl of three different colours of sorghum was passed over their heads, the three colours representing the cycles in a woman's life. The girls were then asked to open their hands to show their readiness to listen to the instruction they had been given, including a sexual education which emphasized the importance of having no sexual relations before marriage.

45. These examples illustrate one of the Special Rapporteur's oft-expressed convictions, namely that educating and informing the population concerned about the phenomenon are key elements in efforts to combat traditional practices affecting the health of women and the girl child. Similarly, the Egyptian example referred to once again in this report emphasizes the need for religious authorities to speak out clearly against such practices.

46. As regards the ritual enslavement of girls, called *trocosa*, to which the Sub-Commission's attention has been drawn, it may be noted with satisfaction that the practice, like forced marriage, has just been declared illegal by the Ghanaian Government. Any ritual involving any form of enslavement or forced labour is now prohibited under the new Criminal Code.

B. Regional initiatives

47. Once again the Special Rapporteur welcomes the initiative of the Intra-African Committee on Traditional Practices Affecting the Health of Women and Children which, together with the Gambian Committee on Traditional Practices (GAMCOTRAP), organized a symposium for religious leaders and medical personnel in Banjul, Gambia, from 20 to 24 July 1998. The objective of the symposium was to establish a dialogue between religious leaders and medical personnel on the religious and medical aspects of female genital mutilation, to draw up recommendations emphasizing the religious and medical viewpoints on the practice, and to define medical and religious strategies for overcoming the problem of violence, genital mutilation in particular, against women.

48. The symposium was attended by 26 religious leaders and medical personnel from 11 African countries, including Burkina Faso, Gambia, Mali, Mauritania, Niger, Nigeria, Senegal and Sudan. The adverse effects of female genital mutilation on the health, psychosocial and socio-economic welfare of women and girls were discussed at length, with emphasis on the "human rights" dimension of the situation.

49. Participants agreed that female genital mutilation was not prescribed by any religion; it was in fact a cultural, not religious, matter and should be viewed as such. At the close of the meeting an appeal was made to all religious leaders to support national laws and international moves to prohibit such practices. Religious leaders were also called upon to make public statements clearly affirming that female genital mutilation, early marriage and other forms of violence did not derive from religion and went against religious teachings. The religious leaders unequivocally condemned the use of religion to justify such practices; they emphasized the importance of information campaigns to put an end to them.

50. Participants agreed that activities should be based on information and education campaigns to make the public aware of the problem. At the close of the symposium they issued a communiqué, a declaration and recommendations condemning and demanding the eradication of genital mutilation and other harmful traditional practices.

51. The Special Rapporteur notes with satisfaction the adoption, by the OAU Council of Ministers at its sixty-eighth session, in July 1998, of the Addis Ababa Declaration on Violence against Women at the close of the symposium for legislators organized by IAC in September 1997. The Declaration was later endorsed by the Assembly of Heads of State and Government. The adoption of the Declaration is an important step towards the formulation of an African charter on violence against women, which would help in passing national laws against female genital mutilation and other practices regarded as forms of violence against women and the girl child. The Organization of African Unity has a leading role to play in this process. The Special

Rapporteur calls this development because OAU has been asked to take such a step since 1991. As an immediate follow-up, IAC has suggested the establishment of a task force to study existing national legislation and regional and international instruments and put forward a model law that Governments can amend as necessary before adoption and implementation. A second symposium for legislators is planned.

52. Among more recent regional initiatives, mention should be made of the regional workshop on concerted action against the practice of female genital mutilation in West African Economic and Monetary Union (UEMOA) member countries (Burkina Faso, Niger, Senegal, Mali) organized by the Burkina Faso Ministry of Regional Integration in collaboration with the Ministry for Social Action and the Family and the Ministry for the Advancement of Women and held in Ouagadougou from 4 to 6 May 1999. Some delegations were headed by senior officials. In exchanges of experiences it was found that regional committees were making headway in their campaign against the practice of female genital mutilation despite numerous financial, material and human problems.

53. The workshop comprised two working groups. The first reviewed legal provisions at the national, regional and international levels and how applicable they were in the UEMOA area. It made three recommendations: preparation of an African charter on female genital mutilation; the adoption of specific legislation against female genital mutilation in all UEMOA States, and ratification by all UEMOA States of regional and international instruments relating to the protection of women and girls, and the establishment of subregional networks of traditional and religious leaders and modern and traditional communicators to support the national committees in their campaign against female genital mutilation within the UEMOA countries.

54. The second working group was concerned with the formulation of a programme within the UEMOA area to eradicate female genital mutilation by the year 2010. The programme it drew up is based on consciousness-raising, the adoption of a common law against the practice, institutional capacity-building in the national committees, which should, it is said, be attached to the departments in charge of the campaign against female genital mutilation, the conversion of female excisionists, and the formulation of a media plan. The group also made recommendations on the financing of the activities of national committees and on educating women about reproductive health and female genital mutilation. A declaration known as the Declaration of Ouagadougou was adopted at the end of the Workshop (see annex).

C. International initiatives

1. World conferences organized by the United Nations

55. The topic of traditional practices dangerous to the health of women and the girl child has been discussed at several United Nations world conferences. The Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993 expanded the scope of the international programme on human rights, emphasizing that "gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of

the human person and must be eliminated". The Conference urged Governments to take steps to combat harmful traditional or customary practices, including female infanticide.

56. The Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in 1995 deal with harmful traditional practices under a number of the key areas they identify. Consistent with the Declaration on the Elimination of Violence against Women adopted by the General Assembly in 1993, they define violence against women as encompassing dowry-related violence, female genital mutilation and other traditional practices harmful to women, female infanticide and prenatal sex selection. They emphasize the harmful effects of certain traditional and customary practices affecting women and the girl child, and call on Governments to take legislative steps to eliminate these practices and acts of violence against women.

57. The above documents also mention the specific effects of certain traditional practices on the girl child, and the Platform for Action states that the reasons why men outnumber women in certain parts of the world include harmful attitudes and practices such as female genital mutilation, son preference (which results in female infanticide and prenatal sex selection), early marriage, including child marriage, and discrimination against girls in food allocation. The Platform suggests concrete steps for Governments to take to do away with cultural attitudes and practices that harm girls.

58. The Programme of Action adopted at the 1994 International Conference on Population and Development called on Governments to take action to stamp out female sexual mutilation and protect women and the girl child against such unnecessary and dangerous practices.

2. Activities by United Nations specialized agencies and bodies

59. Following up on the initiatives taken in the Sub-Commission and elsewhere (see section 1), a number of United Nations specialized agencies and bodies are actively engaged in efforts to eliminate traditional practices affecting the health of women and the girl child, through joint activities or individually. As regards joint activities, mention should be made of the joint statement issued in April 1997 by WHO, UNICEF and UNFPA, expressing the common purpose of the three organizations in supporting the efforts of Governments and communities to promote and protect the health and development of women and children, and stressing their complementary strengths in and focus on strategies to eliminate female genital mutilation.

60. UNICEF has addressed issues such as female genital mutilation, female infanticide, selective abortion, *devi* and *devadasi* (temple prostitution) in India and Nepal, early marriage, food taboos and other traditional harmful practices. In October 1994 it issued an executive directive on female genital mutilation which condemned the practice for aggravating morbidity and mortality among women and girls and violating their basic rights, and recommended guidelines for action. In 1995 it developed a strategic framework and programming guidelines to eliminate female genital mutilation, setting out measures to be introduced at the operational programme level. It has adopted a comprehensive regional strategy to eradicate female genital mutilation in

eastern and southern Africa, including Ethiopia, Eritrea, Kenya, Somalia and Uganda, and taken other action in the region and in Egypt, Sudan, Senegal, Burkina Faso, Mali and Gambia. More recently its efforts have focused on the synthesis and analysis of experience and the production of materials for education and behaviour change. Indicators and means of evaluating regional and national initiatives have been developed. UNICEF plans to review global experience in this regard in collaboration with WHO and UNFPA.

61. In the follow up to the International Conference on Population and Development and the Fourth World Conference on Women, UNFPA committed itself to contribute to the elimination of all forms of harmful cultural, economic, social and political practices that affect the well-being and integrity of both women and men. Its efforts as regards the elimination of female genital mutilation, have focused on advocacy and public education, training and research. The Fund has also supported initiatives to increase public awareness of the adverse effects of the practice. It has supported community based workshops designed to assist the community in examining the practice, recognizing its harmful aspects, and replacing it with socially relevant ceremonies. In 1998, for example, it bestowed the United Nations Population Award on the northern Ugandan Sabinu Elders' Association for its participation in the REACH (Reproductive, Educative and Community Health) Programme which substituted gift-giving and public celebration for female genital mutilation. UNFPA has encouraged Governments to remove administrative and political obstacles, increase public awareness through all channels, such as the media, formal and other educational programmes, and engage in continuous collaboration and consultation with non-governmental organizations. Other action taken by UNFPA has included the appointment of Ms. Waris Dirie as Special Ambassador for the Elimination of Female Genital Mutilation in 1997.

62. The World Health Organization's four main strategies in combating traditional practices have been to play an advocacy role, by emphasizing the importance of action against harmful traditional practices at the international, national and regional levels; to initiate and coordinate research and development activities at the country level and to monitor their progress; to support national authorities, networks, organizations and groups in developing relevant policies, strategies and programmes; and to support the training of health professionals in the prevention of traditional practices, including female genital mutilation, and the management of their health consequences. In March 1997 it launched a Regional Plan of Action to Accelerate the Elimination of Female Genital Mutilation in Africa, setting out the goals for each country to attain. It is currently preparing a comprehensive study entitled "Female genital mutilation: an overview".

63. As part of its activities to implement the Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children, UNESCO has developed a programme to improve biology curricula in schools, which involves the inclusion of information on the negative effects of female genital mutilation. It has also incorporated information on the specific needs of women and children in its formal and non-formal education programmes, and has collected information on the impact of such educational programmes on efforts to eradicate harmful traditional practices.

64. In 1994, UNHCR revised its guidelines on refugee children to incorporate the principles of the Convention on the Rights of the Child. The revised guidelines contain a chapter on health which urges field staff to give high priority to health education regarding harmful traditional practices such as female genital mutilation and the health implications for girls of early marriages and early pregnancies. UNHCR has also issued a memorandum for its field staff (UNHCR/IOM/83/97) with a specific reference to dangerous traditional practices, including female genital mutilation, early childhood marriage, son preference and dowry-related violence. In addition, in its guidelines on the protection of refugee women, it notes that "women may also flee their country because of severe sexual discrimination, either by official bodies or in local communities". It has encouraged countries to consider that persecution faced by women because of perceived transgressions of social mores should be recognized as grounds for refugee status. In its work in refugee camps, UNHCR recognizes that while the social, cultural or religious traditions of refugee communities must be respected, attention needs to be given to certain customs that have harmful effects, especially on women and girls. Its field staff work closely with women leaders, traditional birth attendants, religious leaders and community health workers in refugee camps to disseminate information about the dangers of such practices to physical and mental health.

65. A number of the bodies established under human rights treaties, such as the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, have addressed traditional practices affecting the health of women and girls in their consideration of States parties' reports.

66. The Committee on the Elimination of Discrimination against Women pays particular attention to measures taken by Governments to eliminate prejudices and discriminatory practices that rooted in the idea of the inferiority or superiority of either of the sexes or in stereotyped roles for men and women. Although the information in States' reports on traditional customary practices affecting women and girls is scant, where States parties appear to have such practices, the Committee makes specific recommendations to eliminate them in its concluding comments. Some reports have led the Committee to express dismay at the persistence of discriminatory practices including female circumcision, polygamy, lobola (bride price), witch-burning, food taboos, inhumane rites undergone by widows, one-sided repudiation, and unequal subsistence rights and shares. The Committee has condemned such practices as gravely offending the dignity of women, impeding their advancement and impairing the health of future generations, and has made reference to particular vulnerability of rural women. Since 1990 it has adopted a number of general recommendations, including recommendation 14 on female circumcision, and recommendation 19, concerning violence against women and dealing with forced marriage, dowry death, acid attacks and female circumcision; it also recognizes that traditional practices, including dietary restrictions for pregnant women and son preference, are potentially harmful to the health of women and children. In general recommendation 21, concerning equality in marriage and family relations, the Committee has identified early marriage and motherhood as factors that can adversely affect the health of

women and girls. The Committee is currently preparing a general recommendation on article 12 of the Convention (women and health), which will address the issue of female genital mutilation.

67. The Committee on the Rights of the Child regularly expresses deep concern at certain traditional practices, including early marriage, teenage pregnancy, dowry (in Bangladesh), trokosi (ritual enslavement of girls in Ghana) and female genital mutilation; it has noted that such practices result in girls' being deprived of their rights to survival, health, nutrition and education.

68. During its consideration of certain reports, the Human Rights Committee has noted the persistence of traditional practices and customs which deprive women and girls of their rights, human dignity and lives and impede implementation of the International Covenant on Civil and Political Rights. It has also pointed out that existing legislative measures to outlaw child marriages, dowry and dowry-related violence and suttee (self-immolation by widows) are inadequate; it has expressed concern at practices such as son preference, sex-selective abortion, female infanticide, devadasi (where young girls are pledged for life to temples by their parents in return for heavenly favours) and conjugal rape.

III. GENERAL INFORMATION COMMUNICATED TO THE SPECIAL RAPPORTEUR

69. Among the general information communicated to the Special Rapporteur, inter alia, on traditional practices other than female genital mutilation, many Governments have told her of moves to abolish discrimination against women and violence, including domestic violence, and action to implement the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child. The Rapporteur cannot but remark on the meagreness, not to say absence, of information on other harmful traditional practices such as crimes of honour, the problem of dowries and female infanticide, particularly from the Asian countries which are conspicuous by their lack of replies. Some non-governmental organizations and press reports, nevertheless, have made her aware of certain facts.

70. Thus the Special Rapporteur has learnt of a practice which still seems to be current in Iraqi Kurdistan: followed by certain noble tribes, it is said to consist in burning women or forcing them to commit suicide by setting fire to themselves. The authorities concerned must confirm or deny this report.

71. According to the 25 May 1999 issue of the daily Chark El Awsat, 500 women were killed in Pakistan in 1998, supposedly to uphold their families' honour. "Crimes of honour" are commonplace in the Pakistani countryside where daily life is influenced by tribal and feudal mores. The cause may be a snub to the family resulting from a refusal of marriage by the intended's parents, a decision to divorce, or an amorous escapade. In most instances the case is not brought to court; even when a prosecution is brought, it is unusual for a long prison term to be handed down. Recently, after a crime of honour, the Government published a communiqué condemning it in these terms: "We think there is nothing noble about such behaviour, which represents extremist violence against women and is against the principles of

the Islamic Shariah, which inclines to tolerance." Many human rights champions believed, nevertheless, that the communiqué was not forceful enough.

72. It would be superfluous to emphasize the tremendous efforts made by non-governmental organizations to eliminate all harmful traditional practices and encourage those that promote solidarity and respect and are beneficial to the health of women and mothers. These have certainly been successful, but patience and perseverance are still needed given the tenacity of such practices and the very limited financial resources and material assets available to the NGOs. Mrs. Belamy, the Executive Director of UNICEF, recently remarked that financing programmes was a major challenge, and re-emphasized the need to give Governments and NGOs, including local NGOs committed to the struggle to eliminate harmful traditional practices, every assistance.

73. Universities in several countries, including the United States, have taken an interest in harmful practices, and their bulletins and studies reflect their concerns and recommendations (the Special Rapporteur is thinking in particular of the Buffalo Human Rights Law Review, volume 4, 1998). The mass media have also taken up the challenge and published articles which, in the main, repeat information already in circulation. In some countries, however, such public awareness campaigns, given the tone and the terms used in the articles, have had distressing consequences. Such discussions of traditional practices and female genital mutilation in particular also occur in the courts, in cases brought by NGOs or other individuals supposedly working to eliminate such practices. On occasion during these trials the records reflect a complete lack of respect for those accused and the disdainful and sometimes racially tainted tone adopted by the public prosecutor and counsel for the prosecution. Counsel for the defence has not always insisted on respect for the sensibilities and traditional values of individuals who continue to maintain, during the trials, that they regard female circumcision as a positive tradition they have inherited from their ancestors, and have been brought up to believe that it should be respected and preserved.

74. If there is one other question that is dear to the Special Rapporteur's heart, it is how harmful traditional practices are regarded in the so-called host countries. According to recent information, Maisha, an organization of African women living in Germany which works with European and African women's associations fighting against female excision, has voiced its disapproval of the way in which the topic is treated in Germany. The German media treat it as a sensational oddity, going so far as to publish photographs of circumcised women, who resent such publication as an additional violation. According to Maisha, the German authorities tell neighbours and doctors they must report all cases of girls undergoing excision, whereas prosecutions of people engaging in such practices should be undertaken only with the agreement and testimony of the girls who undergo them. One consequence of this policy is said to be that mothers refuse to take their daughters to the doctor. Maisha believes that individuals must be convinced to give up such practices, but without attacking their cultural heritage or treating them with disdain.

75. Here the Special Rapporteur would like to bring to the attention of the Sub-Commission the statement she made jointly with the Special Rapporteur on

violence against women in connection with the recent trial in France of Hawa Greou, a French woman of Malian origin, sentenced to eight years in prison for performing excisions on some 50 girls. The two Rapporteurs pointed out that the importance attached to certain traditional practices in some communities must be taken into account. Both firmly and unequivocally condemned all practices that violate individuals' physical integrity. They felt, nevertheless, that punishments and sentences based on value judgements could sometimes be counter-productive and encourage communities to close ranks and cling to practices which, although harmful and for the most part clandestine, are nonetheless the only means they have of expressing their cultural identity. Such practices should not be condemned in the courts except as a last resort when education, information and the proposal of alternative rites that do not injure women and girls have not been successful. Training, information and education, especially in countries with high levels of immigration and appropriate physical and financial means, are the best means of combating harmful traditional practices effectively and freeing women and girls from obscurantism and violence.

76. The Special Rapporteur feels it is essential to act with tact and patience, bringing the communities concerned to understand that their cultural values are not to be confused with cultural practices, and that the practices can be changed without adversely affecting the values as such.

77. More and more anthropologists and other experts support the training and education approach. Traditional practices such as female genital mutilation, which are deeply entrenched across generations, cannot be treated as intentional forms of child abuse.

IV. SUMMARY AND CONCLUSION

78. Once again the Special Rapporteur would like to warn against the dangers of demonizing cultures under cover of condemning practices harmful to women and the girl child. The reports she has received from the press and elsewhere show how easy it is for the media, particularly in the West, and even when they believe they are defending the victims, to resort to racist imagery and demonize cultures, religions and entire communities. She recalls the inspired words of François Virot: "Nothing that exists is savage or barbarous, but we all describe as barbarous anything that is not our custom".

79. The Special Rapporteur calls on all countries with large inflows of immigrants to develop and put into effect programmes to combat harmful traditional practices in accordance with their national laws and international standards, but always with due respect for the cultural values of the migrant population groups and without denigrating their cultures or treating the societies concerned with disdain or an air of superiority.

80. The Rapporteur notes with satisfaction the yearly increase in the numbers among the general public in countries particularly affected by the phenomenon who are taking an interest in it. She welcomes the initiatives taken within the communities concerned: this is an important step forward in changing attitudes. She also wishes to pay tribute to non-governmental organizations for their devoted efforts to combat such practices, and for their help to her in carrying out her mission. Special mention should be made

of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children. Similarly, NGOs have been doing a remarkable job of consciousness-raising, information, training and providing material and financial assistance, thus making a substantial contribution to the campaign against such practices.

81. If it is to attain its goals, the campaign must rely on political will in official circles, the eradication of illiteracy, public education, and the rehabilitation of women's image, giving women confidence and respect for themselves and enabling them to realize their potential and the valuable contribution they make to the well-being, security and progress of society.

82. The road ahead is long, but once women are reconciled with themselves, once they have economic autonomy and control of their fertility, they will be for ever free from the thrall of harmful traditional practices.

Annex

THE OUAGADOUGOU DECLARATION

We, Parliamentarians, Ministers of Integration, Ministers of Social Affairs and Promotion of Women, Presidents and Members of the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children, Government Civil Servants, participating at the Regional Workshop on the Fight against Female Genital Mutilation (FGM) in the member countries of the West African Economic and Monetary Union (UEMOA), held from 4 to 6 May 1999 in Ouagadougou, Burkina Faso;

After careful analysis of the situation of FGM in the UEMOA region;

Recalling the Addis Ababa Declaration on FGM, adopted at the sixty-fourth session of the OAU Assembly of Heads of State and Government, held in Ouagadougou in June 1998;

Taking into account the Declaration of Religious Leaders issued at the symposium held in Banjul, July 1998, on FGM as a form of violence against women;

Taking note of the readiness and commitment of international organizations such as the United Nations, the Organization of African Unity, UEMOA, etc. to support any action undertaken in view of the eradication of FGM;

Considering the evident political will of Governments members of UEMOA to combat FGM;

Noting with bitterness the phenomenon of migration of circumcisers within the UEMOA region;

Considering that, despite the multiple efforts made by IAC national committees and other bodies to eradicate FGM in Africa, this practice remains a vital concern;

Considering the importance of traditional and modern means of communication as essential links in the eradication process;

Considering that the eradication of this plague within a reasonable time-frame calls for a concerted action at national, subregional and regional levels;

Hereby declare that the UEMOA region is a privileged network for dialogue, harmonization, implementation and follow-up of joint activities to combat FGM;

Reaffirm the determination of the Inter-African Committee to collaborate with other partners, NGOs and associations for the total eradication of FGM by the year 2010;

Calls upon United Nations agencies, embassies and partners in development to reinforce their technical, financial and material support towards FGM programmes;

Recommend the following:

- The effective implementation of the Addis Ababa Declaration through the adoption of national legislation condemning the practice of FGM;
- The ratification of all United Nations and International Labour Organization conventions and recommendations pertaining to women's rights, particularly the United Nations Convention on the Elimination of All Forms of Discrimination Against Women;
- The creation of national networks of religious and customary leaders as well as networks of traditional and modern communicators with a view of setting up subregional networks;
- The establishment of a mechanism of collaboration with and support to IAC national committees through groups such as parliamentarians, jurists, media personnel, police forces and health professionals;
- The establishment of special services in charge of controlling the migratory flow of circumcisers;
- The creation of a subregional follow-up mechanism in collaboration with IAC national committees within the UEMOA region;

Launch an urgent appeal to all member States of UEMOA for effective implementation of the present Declaration.

Ouagadougou, 6 May 1999



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1999/15
7 June 1999

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fifty-first session
Item 6 of the provisional agenda

CONTEMPORARY FORMS OF SLAVERY

Report of the Secretary-General on the implementation of
the Programme of Action for the Prevention of the Sale
of Children, Child Prostitution and Child Pornography,
submitted pursuant to Sub-Commission resolution 1998/19

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Introduction

The Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography in its resolution 1992/74 and requested the Sub-Commission to submit to it every two years a progress report on the implementation of the Programme of Action by all States.

In its resolution 1998/18, the Sub-Commission requested the Secretary-General to invite all States to inform the Working Group of measures adopted to implement the Programme of Action and to submit a report thereon to the Sub-Commission at its fifty-first session and to the Commission at its fifty-sixth session.

In order that the Working Group might examine this matter at its twenty-fourth session, the secretariat, on 5 January 1999, sent notes verbales to Governments requesting the desired information. As of 2 June 1999, a reply had been received from Mexico.

REPLIES RECEIVED FROM GOVERNMENTS

Mexico

[Original: SPANISH]
[20 April 1999]

1. In order to comply with the commitments it made at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm, Sweden, in August 1996, and to give effect to the recommendations formulated by Mrs. Ofelia Calceñas, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography, during her visit to Mexico in November 1997, the Government of Mexico, through the National System for the Integrated Development of the Family (DIF) and under the auspices of the United Nations Children's Fund (UNICEF), has adopted the Inter-Agency Plan of Action to Prevent, Deal With and Eradicate the Commercial Sexual Exploitation of Children, which is annexed hereto ^{1/} and in which Federal Government and legislative departments and bodies and non-governmental organizations are taking part.

2. The Inter-Agency Plan of Action to Prevent, Deal With and Eradicate the Commercial Sexual Exploitation of Children was submitted at the seminar on "Commercial Sexual Exploitation of Children: International Experiences and Plan of Action for Mexico", which was organized by DIF and UNICEF in August 1998 and in which Mr. Vitit Muntarbhorn, the first Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography, took part.

^{1/} The annex may be consulted in the secretariat files.

3. The formal establishment of the National Commission took place on 24 November 1998 in the context of the Second National Congress on Child Abuse. In addition, the Veracruz State Commission to Prevent, Deal With and Eradicate the Commercial Sexual Exploitation of Children was set up by Executive Decree.

4. The National Commission's functions include:

Promoting a wide variety of activities coordinated with the various levels of Government, private groups and non-governmental organizations taking part in the implementation of the Convention on the Rights of the Child in order to prevent, deal with and eradicate this social problem;

Promoting the establishment of an information system to identify and define the characteristics and qualitative aspects of the problem, as well as its dimensions and magnitude, with a view to setting quantitative goals;

Proposing amendments, additions and new legal provisions to federal and State legislative bodies, particularly those responsible for protecting child victims of commercial sexual exploitation;

Promoting the dissemination of information on and increasing awareness of this problem;

Setting up groups of experts to carry out work in areas to be determined;

Calling on citizens to take part in eradicating this problem;

Promoting public discussion mechanisms to analyse and draft legislative proposals.

5. The Inter-Agency National Commission, which is responsible for implementing the Plan, has held three meetings; at the third meeting, the following working groups or sub-committees were set up:

- (i) Legislation;
- (ii) Diagnosis and information;
- (iii) Training and awareness;
- (iv) Monitoring and supervision;
- (v) Design and development of intervention, recovery and rehabilitation models.

6. The work the National Commission has done so far includes the following:

Legislation

7. On 12 December 1998, the Chamber of Deputies adopted a bill to amend the Penal Code for the Federal District in respect of non-federal offences and for

the entire Republic in respect of federal offences for the purpose of making child pornography a crime and punishing child prostitution more harshly. The bill was submitted to the Senate of the Republic for consideration and adoption.

8. In the State of Campeche, a bill to amend the State Penal Code was drafted to make child pornography a crime; it is under consideration by the State Congress.

Activities relating to the administration of justice in connection with the protection of child victims from any form of sexual exploitation

9. The Office of the Attorney-General and the National System for the Integrated Development of the Family concluded a cooperation agreement to promote the establishment of agencies specializing in cases involving children and organized training courses for members of the prosecution service and the criminal investigation police with a view to increasing the awareness of justice officials who help child victims and making their work more effective.

10. As a result of this inter-agency commitment, the number of specialized agencies throughout the national territory has increased to 20.

Diagnosis and information

11. Working under the auspices of the Inter-American Children's Institute for the purpose of determining the magnitude of the problem of child prostitution, the National System for the Integrated Development of the Family proposed that the non-governmental organization, Espacios de Desarrollo Integral A.C. (EDIAC), should conduct a field investigation of commercial sexual exploitation in Mexico.

12. The investigation was based on information dating from 1996 until the present and, in addition to child prostitution, it focused on related problems, such as family violence, migration and street children, and used a questionnaire to find out what information was available on the basis of the work of government agencies, international cooperation organizations and non-governmental organizations.

Awareness campaigns

13. Based on the guidelines of the World Tourism Organization and the International Federation of Womens' Travel Agencies, the Tourism Department designed a pamphlet to explain the prohibition on sexual tourism in Mexico to foreign tourists. The pamphlet will be published shortly by the national DIF and UNICEF.

14. The Plan of Action to Prevent, Deal With and Eradicate the Commercial Sexual Exploitation of Children is a joint undertaking by agencies and non-governmental organizations which should be consolidated in the coming months and is a commitment by the Government to the adoption of effective measures to eradicate the commercial sexual exploitation of children in Mexico.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1999/15/Add.1
5 August 1999

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-first session
Agenda item 6

CONTEMPORARY FORMS OF SLAVERY

Implementation of the Programme of Action for the Prevention of
the Sale of Children, Child Prostitution and Child Pornography

Report of the Secretary-General submitted pursuant
to Sub-Commission resolution 1998/19

Addendum

The present addendum contains information submitted by the Government of
Costa Rica.

Costa Rica

[Original: Spanish]
[23 April 1999]

Legal framework

1. The Penal Code describes offences related to child prostitution and the sale of children and establishes the corresponding penalties in the following articles:

- 188 - Non-fulfilment or abuse of parental authority
- 184 - Abduction of a minor or person under disability
- 167 - Corruption
- 168 - Aggravated corruption
- 169 - Procuring
- 170 - Aggravated procuring
- 171 - Pimping
- 172 - Trafficking in women and children
- 173 - Sodomy
- 174 - Participation of third parties related to the victim by family ties or who abuse their authority or responsibility.

2. The Costa Rican Family Code also contains rules governing the exercise of parental authority with regard to the protection of minors (chap. I, sect. III, arts. 127 to 161). In addition, the Convention on the Rights of the Child has been applicable in our system with precedence over common legislation as from July 1990.

The sale of children

3. This does not appear as such as an offence, the closest offence being trafficking in children for adoption. Chapter XVII of volume II of the Penal Code, under the title "Offences against human rights", was reformed with the addition of articles 374 and 375, imposing a custodial sentence of between one and four years on a mother, father or any person exercising the legal representation of a minor, who offers that minor for adoption, in exchange for any type of payment or fee or financial reward. Likewise, any person offering payment, a fee or a reward for the purposes of adopting a minor is liable to the same penalty, as is the person making the payment.

4. Under article 375 of the Penal Code, any person promoting or facilitating the trafficking of children to offer them for adoption, for the purpose of selling their organs, is liable to a prison sentence of 5 to 10 years.

5. Having identified offences specifically related to the sale of children, it is possible to extend the range of related offences to other rules of our

legal system, such as the non-fulfilment of duties related to parental authority or abuse in the exercise of such authority, which are referred to both in the Penal Code and in the Family Code.

6. Those criminally liable in such cases would be the parents of the child, guardians or keepers or any persons shown to have taken part in the unlawful act.

7. There is no offence in the Costa Rican legal system specifically referred to as child trafficking (tráfico). The only description which could cover that type of situation is what is known as "abduction of minor or person with a disability", established in article 184 of chapter IV of the Penal Code (Offences against the family), which stipulates as follows: "Any person removing a minor of 12 years of age or a person with a disability from the authority of his or her parents, keepers, guardians or person responsible, or holding the minor against their will, shall be liable to a prison sentence of six months to two years; if the minor has expressed consent or if over 12 years of age, the sentence shall be moderately reduced. The same sentence shall apply to any person serving as intermediary for a minor to depart from the parental authority of his parents without fulfilling the requirements of the law. The penalty shall be increased by a third if the purpose of the act is profit."

Child prostitution

8. Any minor engaging in prostitution is considered to be the victim of abuse. Any persons favouring or facilitating this type of abuse are delinquents and, according to circumstances, must be considered corruptors of minors, procurers or pimps. Such acts may be prosecuted and whoever performs them is criminally liable.

9. In articles 170 and 172, the Penal Code provides for the offences of aggravated procuring and commerce (trata) in women and children. In the first of those articles, any person, either gainfully motivated or to satisfy the desires of others, who furthers or facilitates the prostitution of minors under 18 years of age, of either sex, is liable to a custodial sentence of 4 to 10 years; in the event of deception, violence, abuse of authority or the use of any means of intimidation or coercion, and if the offender is an ascendant, descendant, husband, brother, guardian, or in charge of the minor's education, care or custody of the victim. Under article 172, any person promoting or facilitating the entry to or exit from the country of women or children of either sex for purposes of prostitution is punishable with a prison sentence of 5 to 10 years. This sentence shall be 8 to 10 years if any of the following circumstances apply:

- (a) If the victim is under 18 years of age;
- (b) In the event of deception, violence, abuse of authority or any means of coercion or intimidation;
- (c) If the offender is an ascendant, descendant, husband, brother, guardian or in charge of the education, care or custody of the victim.

10. There are a number of offences in the Penal Code which could cover the case; they are all contained in the section of the Code devoted to sexual offences.

11. Among the offences related to sexual exploitation, procuring is the one that best covers all matters connected with prostitution and its gainful exploitation. The offence appears in two forms:

(a) Procuring: "Any person who, gainfully motivated or to satisfy the desires of others, shall promote or facilitate the prostitution of persons of either sex shall be punishable with a prison sentence of two to five years";

(b) Aggravated procuring:

"The penalty shall be 4 to 10 years' imprisonment in the following cases:

1. If the victim is under 18 years of age;
2. In the event of deception, violence, abuse of authority or any means of intimidation or coercion; and
3. If the offender is an ascendant, descendant, husband, brother, guardian or person in charge of the education, care or custody of the victim."

12. The basic type of procuring (proxenetismo) (art. 169 of the Penal Code) refers to sexual exploitation on a broader scale, outside the more personal sphere of pimping (rufianeria). The person committing the offence is indeterminate: any man or woman who obliges certain persons to prostitute themselves for the purpose of obtaining some profit thereby, or else, for the purpose of satisfying the libidinous desires of others. The person engaging passively in the offence may be any man or woman who is prostituted for the profit of another. However, if the victim is a minor, the offence becomes one of aggravated procuring (art. 170 of the Penal Code). The person committing this aggravated offence is in principle indeterminate, except in the above case of subparagraph 3, where he is an ascendant, descendant, husband, brother, guardian or person in charge of the victim.

13. A condition of procuring is the intention of obtaining gain thereby or satisfying the desires of others, so that, as mentioned above, it covers the various forms of child prostitution.

14. Another type of recognized offence which is useful in dealing with the problem of child prostitution is that of commerce in women and children (trata de mujeres y de menores), which combines the notion of prostitution for gainful purposes and that of trafficking in persons to that end. As far as international prostitution networks are concerned, the relevant offence is described in article 172 of the Penal Code as follows: "Any person promoting or facilitating the entry to or exit from the country of women or children of either sex for purposes of prostitution shall be punishable with a prison

sentence of 5 to 10 years. This sentence shall be 8 to 10 years if any of the circumstances listed in article 170 apply." The sentence is extended under the terms of article 170, in this case, if the victim is under 18 years of age.

15. As it may involve child prostitution, it is worth mentioning the offence of pimping (rufianer(a)), which invariably entails exploitation of the victim (art. 171 of the Penal Code): "Whosoever lives off the proceeds, even partially, of a person engaging in prostitution, using the gains arising from that activity, shall receive a prison sentence of between two and three years." This offence refers to a personal relationship between an abuser and a prostitute, by which the former derives profit from the activities of the latter. The person incurring criminal liability is indeterminate, and may thus be either a man or a woman, although the offence is normally committed by a man. The person passively engaging in the offence may be either a man or a woman insofar as that person is engaging in prostitution. The most frequent case is for women to be the victims of exploitation, generally by their companion. The offence may be understood as covering the cases of children prostituted for the upkeep of their parents, guardians, abuser or their own companions, so that the offence is considered to occur on a smaller and more personal scale.

Child pornography

16. For the specific case of pornography, there is the Public Spectacles Act and the Public Spectacles Commission; there is also the Act Regulating Publicity, under which such offences may be prosecuted.

17. This type of offence is not specified as such in the Penal Code. The closest offences would be corruption (corrupción) and aggravated corruption. Whoever promotes the corruption of a person under 16 years of age, by means of premature and excessive, sexual or perverse acts is liable to a prison sentence of 3 to 8 years, even if the victim consents either in taking part in the acts or in seeing them performed, and to a prison sentence of 4 to 10 years if the victim is under 12 years of age, in cases where the offender is an ascendant, husband, brother, guardian or responsible for the education, care or custody of the victim. The notion of corruption implies inciting the minor by means of pornographic magazines or videos. Corruption in this sense and pornography are very closely related.

18. The possession of pornographic material is not prohibited in Costa Rica, where only the distribution of graphic, audio or video material is regulated. Possession is only restricted for minors. The production of pornographic material is considered an offence to the extent that it implies that the persons performing sexual acts are under 16 years of age. The type of offence which is most relevant in this case, then, is "corruption", either according to the basic definition given in article 167 of the Penal Code, or in its aggravated form in article 168:

(a) "Any person promoting the corruption of a child under 16 years of age, by means of premature or excessive, perverse sexual acts, even though the victim consents to take part in such acts or to see them performed, shall be

punishable with a prison sentence of 3 to 8 years. The act is not punishable if the minor is already corrupt.";

(b) "The sentence shall be 4 to 10 years' imprisonment in the cases covered in the foregoing article whenever:

1. The victim is under 12 years of age;
2. The offence is committed for gainful purposes;
3. Deception, violence, abuse of authority or any other means of intimidation or coercion are involved; and
4. The offender is an ascendant, husband, brother, guardian or responsible for the education, care or custody of the victim."

19. Of course, this clause is not restricted to the use of children in pornography. Nevertheless, it provides a means of penalizing the offence in cases where a child used for pornographic acts has been corrupted, or if submitted to acts which are improper for his or her age and sexual maturity. To the extent that the offence covers the performance of perverse, premature or excessive acts, circumstances which are left to the judge's appreciation, it may be considered to cover cases of child pornography. As only few cases have ever been recorded, there is no recognized case-law in this respect.

20. The active offender is indeterminate, so that it may be anyone with criminal capacity, except in the cases covered by subparagraph 4 of article 168, which increases the penalty if the offender is related by filiation or has custodial obligations with respect to the child.

21. The passive person involved in the offence in both types of corruption refers to minors. However, some major omissions are worth pointing out:

(a) There is no offence if minors between the ages of 16 and 18 are involved. Article 167 in fact refers to minors of 16 years of age, which excludes and does not penalize for corruption the use in pornography of persons above that age, despite the fact that they may be children under the terms of the Convention on the Rights of the Child;

(b) Corruption is not considered an offence if the minor is already corrupt. Moreover, the absence of corruption is not presumed, which reverses the burden of proof in the sense that what is judged in the trial is not the active offender but the state of sexual perversion of the minor. This provision is contradictory, since if a minor agrees to perform acts of pornography, it is because the child must have been affected by earlier attempts at corruption. In any case, how can it be considered that a minor at that age is sufficiently knowledgeable to appreciate sexual acts of the magnitude required to constitute an offence? In this way, it becomes easy for promoters of pornography to escape responsibility, by providing evidence that they contracted the minor when the latter was already corrupt and that he or she unhesitatingly engaged in the sexual acts.

Action by institutions

22. There are programmes concerned with assistance for boys and girls who are victims of prostitution or pornography. They include: the Programme of Care for Minors at Social Risk; the branch of the Latin American Prevention and Health Education Institute (ILPES), Manos Amigas, Fundación Promoción y Acción Alternativa (PROCAL), ASOMARI (assisting girl prostitutes) and the Salvation Army.

23. The subject of child prostitution has attained high levels of complexity within Costa Rican society. This situation has led national institutions (the State and civil society) and international institutions to combine their efforts to tackle the problem.

24. The investigations which have taken place into different aspects of the subject have been sporadic and qualitative in nature; as a result, the availability of official data on the scale of the phenomenon is limited. Even so, social dynamics are steadily bringing the problem to the forefront of attention and are impelling the different sectors into taking action to deal with it.

25. In 1996 a group of public and private national and international institutions decided to join forces to embark on a course of action for the prevention and elimination of the commercial sexual exploitation of boys, girls and adolescents in Costa Rica. To that end it was proposed to establish an open reflection facility for the discussion and analysis of the problem and the preparation of a draft national action plan leading to an integrated and comprehensive approach to the problem.

26. To that end, the Executive Board of the National Children's Trust (PANI) - an autonomous institution with a decentralized administration and its own budget, and the apex institution concerned with the rights of the child - decided to establish the National Commission for Action against the Commercial Sexual Exploitation of Boys, Girls and Adolescents in Costa Rica at its ordinary session No. 97-0055, held in 1997. The Commission is made up of public bodies, NGOs and international organizations. This measure is designed to give impetus to a long-term work plan of an intersectoral character, which would encourage the effective participation of the different actors in society, including minors themselves.

27. For the purposes of its work, the Commission deems the commercial sexual exploitation of boys, girls and adolescents to be:

- (a) A fundamental violation of the rights of children and adolescents;
- (b) A form of abuse involving the sexual victimization of boys, girls and adolescents in connection with a commercial transaction, consideration for which may be in cash or in kind;
- (c) A contemporary form of slavery;
- (d) An enforced and harmful income-generating activity.

28. The following governmental and non-governmental bodies are participating:

Casa Alianza;

Defence for Children International (DNI-Costa Rica);

Office for the Defence of the Inhabitants of the Republic;

Fundación de Lucha contra la Prostitución Infantil (LUCOPI);

Fundación PANIAMOR;

Fundación PROCAL (Promoción, Capacitación y Acción Alternativa);

Fundación para el Desarrollo de la Lucha contra el SIDA (FUNDESIDA);

United Nations Children's Fund (UNICEF);

Latin American Prevention and Health Education Institute (ILPES);

Costa Rica Tourism Institute (ICT);

National Women's Institute;

Women's International League for Peace and Freedom (WILPF);

The National Directorate for the Prevention of Violence and Crime in the Ministry of Justice;

The Ministry of Security and the Interior;

The Department for the Control of AIDS and Sexually Transmissible Diseases in the Ministry of Health;

The International Programme on the Elimination of Child Labour of the International Labour Organization (ILO-IPEC);

The Technical Secretariat for Children and Young Persons;

The National Children's Trust (PANI);

The Union of Private Child-Care Institutions (UNIPRIM);

The University of Costa Rica;

The Institute for the Child (INI) and the Research and Teaching Centre (CIDE) in the National University.

29. The Group has concentrated its efforts on determining the scale of the problem and on promoting action to amend current legislation. In addition, it is promoting action to develop awareness within the population and in the

fields of prevention, repression and care. Among other reforms, it is seeking to have the preparation of pornographic material involving children designated as a crime.

Framework plan of action

30. The Framework Plan of Action proposed by the Commission is comprehensive in scope; it thus proposes measures in the fields of policy, legislation, repression, prevention, care and research. In each of these fields attention is given to the four elements identified as problem areas, namely child prostitution, pornography, sex tourism and trafficking in minors. The measures proposed include the following:

(a) The holding of meetings and working sessions for the discussion and analysis of the problem (with religious leaders and representatives of local governments, the National Chamber of Tourism and airlines and the shipping and overland transport sectors);

(b) The consolidation of means of facilitating active international cooperation with the implementation of proposals (UNICEF, ILO, ILANUD, IPEC, PANI);

(c) The establishment of facilities for continuing coordination permitting exchanges of resources and concertation of efforts (Social Council, NGOs, hotel and tourism enterprises, Ministry of Tourism);

(d) The preparation and conduct of workshops with decision-making powers, made up of institutions responsible for establishing or implementing policies, plans and programmes with a direct or indirect bearing on the problem areas (Executive Board of the Costa Rica Social Insurance Fund, PANI, the Mixed Social Aid Institute (IMAS), the Propaganda Control Office, the Costa Rica Tourism Institute (ICT), the Migration and Aliens Office, the Civil Registry, the Customs service);

(e) The preparation and dissemination of leaflets and bulletins which explain in simple terms the procedures to be followed and the bodies to be approached in order to report cases of sexual exploitation (police, NGOs, public institutions, Office for the Defence of the Inhabitants).

31. Other activities included in the Commission's Plan of Action include the signature of an agreement between PANI, ICT and UNICEF to cooperate in the campaign to disseminate information on the legal measures and penalties attaching to the use of boys, girls and adolescents for sexual commerce. Efforts are also being made to promote awareness of the psychological and social implications of these sexual practices for children and young persons.

32. At the same time, close coordination and training facilities are being maintained with the different police forces (national, municipal, transit and migration), the Judicial Investigation Service, the Public Prosecutor's Office and ICT on these subjects.

Principal successes and constraints

33. The principal successes and constraints are of different natures.

(a) In the sphere of policy:

- (i) The situation of sexually exploited persons has now become a subject for political discussion and a priority theme for the national Government;
- (ii) The problems are considered as a form of slavery;
- (iii) The authorities at the highest level have now genuinely adopted a clear position regarding the state of exploitation in which these boys and girls find themselves;

(b) In the sphere of legislation:

Draft amendments to the Penal Code, which would permit the redefinition of penalties, or the fixing of penalties for acts which are not at present designated as punishable, are under discussion in the Legislative Assembly. However, the efforts made in various government sectors to secure agenda priority for this project, owing to the urgency of other legislative matters, have proved unsuccessful.

(c) In the sphere of repression:

- (i) The inter-institutional forces in the country have joined together in the conduct of operations known as "patrols", by means of which the whole weight of the law is brought down on places where minors exposed to situations of sexual exploitation are normally to be found;
- (ii) The measures available take a wide range of forms: the withdrawal of licences, the closure of premises, the expulsion of aliens without papers and, naturally, the immediate taking into care of the minors found on those premises;
- (iii) Continuing efforts are being made to develop awareness and motivation within the police forces in order to develop a clear understanding that the minors found on these premises are victims and that actions of a nature to victimize them further are to be avoided;
- (iv) The measures taken are marked by a high degree of inter-institutional commitment on the part of the Ministry of Public Security, the Ministry of Health, the Municipal Council of San José and the Migration Office;

- (v) In February 1999 strategies were designed to use this methodology to investigate the more discreet type of premises, which are not specifically bars or nightclubs, in which this scandalous situation is regularly reported to exist;
- (vi) The Costa Rica Tourism Institute has given its unrestricted support to the withdrawal of tourist licences from hotels which make their installations available for these activities and for the immediate deportation of foreign tourists who engage in the offence;
- (vii) The Office of the Prosecutor for Sexual Activities in the judiciary, which has given considerable support to victims and has obtained the easing of legal proceedings affecting them, has been strengthened with regard to both geographical coverage and competence.

(d) In the sphere of investigation:

In 1998 a beginning was made with the collection of reliable information on the situations of minors who were victims of sexual exploitation. It is not yet possible to give a full picture of the situation in terms of numbers involved. It is known that there are some 200 girls on the streets and being sexually exploited in the metropolitan area of San José. However, it is appreciated that that figure represents only the tip of the iceberg. According to the reports received (the majority of which are anonymous and very difficult to corroborate), the majority of the minors are reached by beeper or cellular telephone. The transactions have the support of a network which contacts the girls or adolescents in their homes or schools and takes them directly to a private house or an apartment where the client is waiting. The investigation aspect is possibly the one which requires greatest support on account of the degree of sophistication demanded by the sort of methodology needed to arrive at the true heart of the problem. However, there is available an investigation sponsored by UNICEF, which contains important data reflecting the model of approaches made to minors; using that model, it has been possible to obtain an idea of the psychological profiles of the victims and an approximate knowledge of their social and economic condition.

(e) In the sphere of prevention:

- (i) Two television campaigns have been organized showing the exploitative elements inherent in the activity. This is a way of spreading awareness of the subject and securing public support for the reporting of cases;
- (ii) More financial resources are needed to keep up continuing campaigns to disseminate knowledge of rights.

(f) In the sphere of care:

- (i) In 1998 a project was launched to provide care for 200 girls and adolescents in the metropolitan area in the fields of

physical and mental health, access to health services, education and nutrition. The project is financed by ILO-IPEC and FUNDESIDA and receives support and continuing feedback from all the members of the Commission. PANI, which continues to enjoy the support of the bodies on the Commission, is developing similar projects in the provinces of Limón and Puntarenas by purchasing services from local non-governmental organizations. In these two provinces the elements mentioned earlier are being duplicated to the extent possible. At both governmental and non-governmental levels there is satisfaction at the successes achieved in the all-too-short two years of intense effort in this field;

- (ii) At the moment the subject is of great interest for the national and international press; both can provide a great deal of support for current measures by emphasizing the clandestine and illegal nature of the activity;
- (iii) One of the major constraints which is continually being encountered in this area is the propensity of certain bodies to provide unreliable statistical data containing figures which are on occasion devoid of sense;
- (iv) The Government of Costa Rica considers that the problem is not so much one of concealing information but rather of avoiding the lasting stigmatization of the boys, girls and adolescents concerned and especially those living in conditions of extreme poverty - conditions which are in no way a direct cause of the problem;
- (v) There is an awareness that the problem facing us is an important one, not on account of the numbers of persons affected but because each one of them has rights and is a citizen of the country.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1999/16
17 June 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Fifty-first session
Item 6 of the provisional agenda

CONTEMPORARY FORMS OF SLAVERY

Systematic rape, sexual slavery and slavery-like practices
during armed conflict, including internal armed conflict

Note by the Secretariat

1. In its resolution 1998/18, the Sub-Commission requested that the mandate of the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict, including internal armed conflict, be extended for another year and that Ms. G. McDougall, as Special Rapporteur, submit an update on recent developments with respect to her mandate at its fifty-first session. By its decision 1999/105, the Commission on Human Rights approved the extension of the Special Rapporteur's mandate.

2. The Secretariat was informed that the Special Rapporteur is not in a position to submit her written report by the deadline and that she will submit an oral report to the Sub-Commission at its present session. The written report will be made available at the fifty-second session of the Sub-Commission.
